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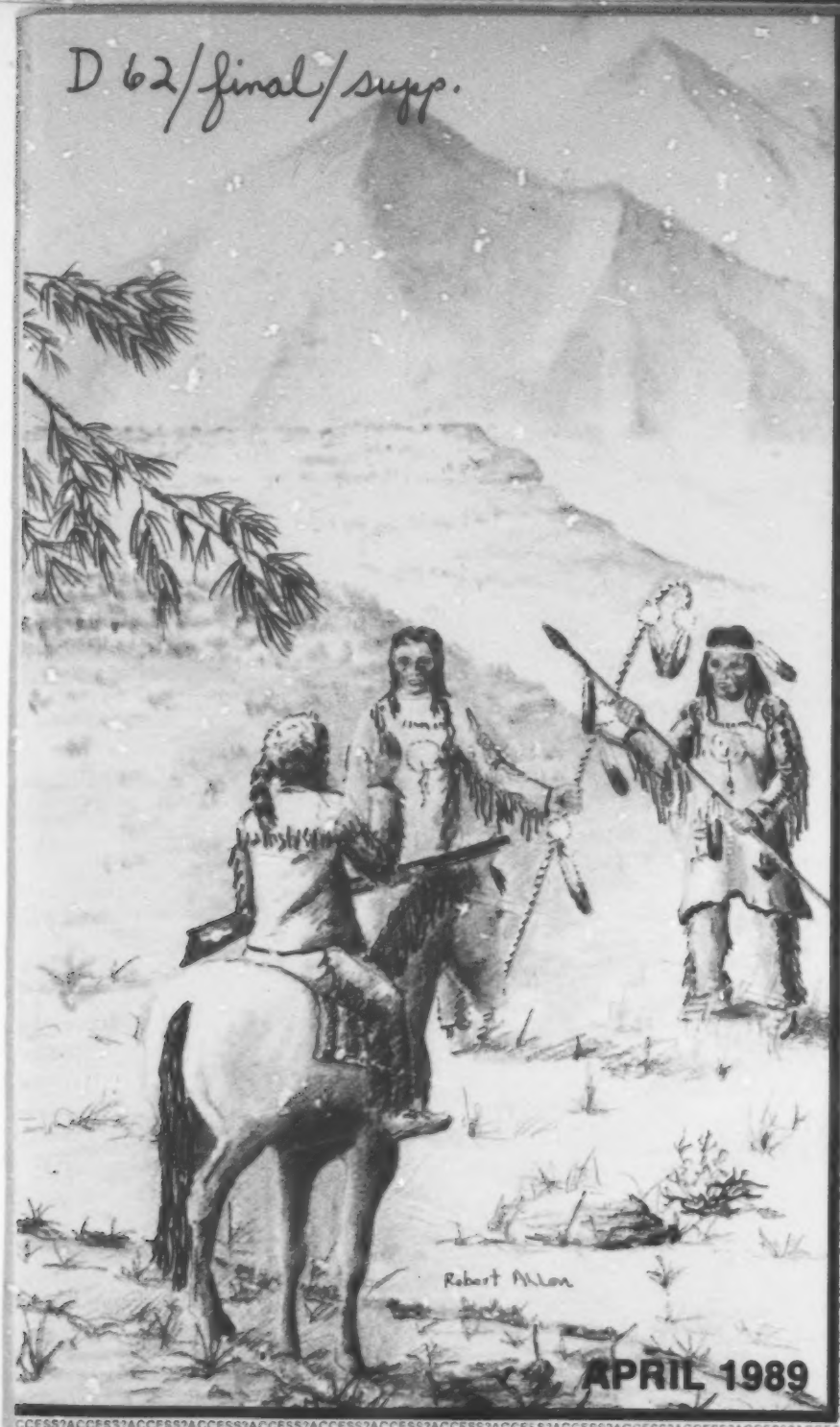

APRIL 1989

ACCESS

State Director Guidance

FINAL

U.S. Department of the Interior
Bureau of Land Management
Montana State Office

READEX FICHE best copy available

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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TAKE PRIDE IN AMERICA

IN REPLY TO:

April 14, 1989

Dear Reader:

This supplement to the "State Director Guidance for Resource Management Planning in Montana and the Dakotas" incorporates changes and corrections resulting from the public review of the August 1988 draft. This document updates and replaces the Access portion of the April 1983 State Director Guidance.

I appreciate the effort and concern of all who submitted comments on the draft. As a result, a new section has been added to the Appendix of the document. In total, we received 50 comments on the draft. These came from individuals and organizations, representing a wide diversity of interests. Our analysis made no attempt to "count the votes." Rather, we analyzed the content of all the comments and found a total of 34 separate and substantive issues. These issues and our responses are found in Appendix D.

A number of recommendations were received regarding the three state maps contained in the map packet at the back of the document. Several of the recommendations were adopted and the maps accordingly changed. Other recommendations were not incorporated and our reasoning for not making these changes is also explained in Appendix D.

Again, thank you for your sincere interest, considerable effort, and excellent input. We look forward to the challenges and benefits this new program thrust will bring for the public lands and the people of Montana, North Dakota, and South Dakota.

Sincerely,

Marvin LeBow

BLM-MT-PT-89-002-4211

ACCESS

Supplement to State Director Guidance for Resource Management Planning in Montana and the Dakotas

Bureau of Land Management
Montana State Office

Marvin LeNoue
State Director

April 1989

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STATE DIRECTOR GUIDANCE
ACCESS SUPPLEMENT

This supplement replaces the "Access" section of the 1983 State Director Guidance and provides an access action plan. Appendix C also amends the June 1984 Land Pattern Review and Land Adjustment Supplement to the 1983 State Director Guidance. The area covered by this policy includes BLM jurisdictions in Montana, North Dakota and South Dakota.

The purpose of this document is to (1) describe BLM intentions for management of the access initiative, (2) to achieve better overall public understanding of the program, and (3) establish greater management efficiency for lands and resources through identification and prioritization of access needs. Appendix A provides a broad action plan for BLM while Appendix B provides the access planning base maps. Appendix E provides a Glossary of Terms common to an access program for BLM.

Access, in a BLM management context, is more than the physical and legal permission to enter or use land. This program also involves such diverse measures as public land signing, mapping, user outreach, intergovernmental coordination, enforcement and land acquisition or repositioning of lands. Proper management of access may also involve the restriction or closure of public lands to protect fragile lands or resources. All of the above concepts will be operated from a balanced perspective and based on multiple use prescriptions developed through land use plans and public involvement.

INTRODUCTION

Access is one of the most hotly debated and fought issues in the west today. Recreation groups are concerned about the provision of access to public lands. Private landowners are concerned about their property rights and the potential for adverse impacts. Mineral operators are concerned with availability of publicly owned mineral resources for exploration and production. BLM, in consideration of these issues, is developing an access initiative to meet its various public mandates.

The Federal Land Policy and Management Act of 1976 (FLPMA) calls for retention and management of the vast majority of public lands. Retention areas are shown in Appendix B. BLM access efforts will center in these areas. As a general rule, access will not be pursued outside the retention areas. FLPMA provides authority for acquiring and managing access. Access management must include a balanced application for multiple use management.

The public land surface ownership pattern in Montana North and South Dakota is highly fragmented. Access to some of the 9.2 million acres of BLM public land is difficult and in some cases impossible as a result of a long history of public disposal laws (homesteading, state selection, etc.) Modern-day conflicts over access can occur whenever ownership is fragmented, or along waterways or where prime resource values occur and recreation or other user demands are high. Even where there is access, lack of boundary markers and inadequate maps often contribute to confusion about access and can result in conflicts between the public, public land administrators, and the owners of associated or intermingled private lands.

Legal access should exist for proper multiple use management of public land. However, legal access and its use must be properly managed to meet management goals for the resources and ownerships involved. This must ensure consideration for resource management (use, development, and protection) and public and private property rights.

Uncontrolled access is not often in the public interest. In certain situations, limited, restricted or strictly regulated public access is most appropriate. A few examples of natural resource related problems, that arise from unrestricted access include degradation of critical habitat, air and water pollution, soil erosion, and impacts on visual quality.

A logical course of action in access acquisition can only be initiated after a thorough analysis of existing and future needs. Generally, legal access, in some form, is sought for administrative access for agency personnel, for authorized users, and for the general public. Legal access obtained for any of these reasons may involve an easement, right-of-way, land exchange, memorandum of agreement, cooperative agreements, and/or eminent domain as a last resort.

The State Director Guidance (SDG) issued in April 1983, included criteria for planning decisions involving access. This Access Supplement and map package summarizes and/or complements and supplements existing land use plans with information obtained during the access inventory and needs assessments. Access management should be based on land use or activity planning. Specific details for any given transaction will be developed and documented, and such action will comply with the requirements of FLPMA and NEPA.

ACCESS GOALS AND OBJECTIVES

The BLM shall endeavor to maintain existing access, provide future access, and manage access to public lands in coordination with other federal agencies, state and local governments, and private landowners. Access has been identified as a high priority management issue for the BLM in Montana and the Dakotas for the next 5 years.* The Bureau's access program decisions should be made after thorough analysis and study of land use potential, resource values and public demand, and should achieve the following objectives:

1. Establish and maintain an information base on existing access and future needs. (See maps attached).

2. Disseminate existing and updated information on public lands access through maps, other information sources and signing of BLM road networks, trails or other public access points.

3. Obtain access to public lands that meet planning requirements and the criteria for retention and management. As each access case is processed, qualifying program considerations, access management criteria and necessary evaluations will be conducted.

4. Protect, maintain and manage existing access to public lands (including public mineral resources).

5. Manage access to public lands within the Bureau's multiple use mandate.

ACCESS PROGRAM DIRECTION

The existing pattern of federal public lands in Montana and North and South Dakota, with intermingled private and state ownership, presents a situation whereby multiple use management is complicated. Legal and physical access to these lands by agency personnel, contractors, and licensees, as well as the general public, is a basic requirement for multiple use management of better blocked lands or needed resources. Therefore, access will normally be considered as a foundation element for multi-resource planning and action, with priorities being established by issues and needs. In certain instances, however, public land tracts may be best managed without access.

Legal and physical access needs are identified through this guidance, through Resource Management Plans (RMP) and site specific activity plans. Access is to be acquired through such tools as land exchanges, direct purchase of land or land rights, rights-of-way, or easements or long-term land use agreements providing for public access. The RMP should generally identify, in some priority order, the areas of public land which need legal and/or physical access (note: keep in mind that changes in national or regional resource priorities and economies may change these priorities from time to time). Site specific locations and types of access (exclusive, non-exclusive or temporary) will normally be addressed at the project or activity planning stage. In some instances, this may be addressed during the RMP process. Planning of routes will normally be done during preparation of the activity plan and accompanying route analysis.

Access to public lands is now available as follows:

- State and county roads which adjoin or cross a particular tract of public lands.

- Bureau-owned or controlled roads for which the Bureau has acquired adequate legal rights across non-federal lands (Permanent Exclusive Easements).

- Roads which are generally considered open to the public, but which have never been formally dedicated by county or state government.

- Roads over which the Bureau has acquired nonexclusive (permanent and/or temporary) easements from owners of underlying land. In this case, the ownership of the road remains with the individual landowner. The Bureau only acquires the right to use the road along with its agents, licensees, and permittees for a specific purpose. Rights for the general public are not obtained.

- Verbal or written permission of the landowners to cross nonfederal lands to reach a particular tract of public land. Such permission could be withdrawn at any time by the landowner and would become invalid with the change of ownership of the private land.

*Strategic goals for Montana, North Dakota and South Dakota, 1988-1993.

- River/water access provided via the Montana Stream Access Law.
- Trail Access Management — Foot, horse, or bike access are all potential management concerns and/or tools.

Access needs are to be determined on the basis of the following program management considerations:

A. **Resource Values** — The commercial, casual use or protection of the public lands are important management issues for the Bureau. Resource values and their use or nonuse require a multiple use perspective including various access oriented considerations. These considerations include:

   — Right-of-Way Corridors — As all land uses and plans become more restrictive, avenues for utility and transportation rights-of-way must be provided. Planning must ensure the availability of these right-of-way networks where appropriate.

   — Forest Management — Legal access will normally be provided to all stands of merchantable timber which are scheduled to be sold by competitive bid. This access may be in the form of a temporary easement across nonfederal lands in certain instances. However, permanent rights are to be acquired to all such stands where the need for continued access for subsequent timber sales, reforestation or the management of other resources exists.

   — Recreation — Legal access is to be provided to rivers, water bodies, trails, and tracts of public lands having significant values for outdoor recreation. 43 CFR 8300.0.-6 that: "In cooperation with state and local government and private landowners, the Bureau of Land Management shall endeavor to provide for public access to public lands with outdoor recreational values."

   — Wildlife — Provide access or control of access to manage habitat, hunting, fishing, or non-consumptive wildlife uses.

   — Minerals — Although the Bureau is not required to provide access to mineral resources, the planning and acquisition of such access could be helpful in controlling the construction of multiple and unnecessary access routes within the same general area. The planning of major access routes across public lands for later construction, either by the Bureau or subsequent mineral developers, should also be considered in some areas.

B. **Public Demand** — Public demand is closely tied to resource values. As the need for a resource changes, its value fluctuates accordingly. Demand is one of the key criteria in prioritization of access needs.

C. **Size** — The size of the public land tract is an important consideration. As a rule, large tracts have a priority. But, resource values such as recreational sites may justify acquisition of access to smaller tracts.

D. **Bureau Investment** — For those projects on public lands in which substantial public monies are spent, and in which continuing diverse public use is expected, exclusive access for the general public will be obtained. For lesser investment projects and/or those to which general public use will need to be limited, a nonexclusive easement will be obtained.

APPENDIX A
PROGRAM ACTION PLAN

The following guidelines provide BLM access direction for all agency programs and personnel in Montana, North Dakota and South Dakota.

1. Recognize access as a high priority multiple use objective.

2. Recognize need for a public land ethic and a need to educate land users on respect for public land and for private property rights.

3. Commitments for the agency, built on the inventory and planning guidelines in this document, will be carried forward in short- and long-range budget and other management efforts.

4. Disseminate existing and updated information on public lands access through maps, other information sources, and signing of BLM road networks, trails, or other public access points.

5. Obtain access for the type of use desired, or establish public land ownership patterns that guarantee availability of sites or areas. Accomplish this by the following:

   — Easements acquired through purchase, exchange, donation, or eminent domain procedure.

   — Rights-of-way, including reciprocal, if appropriate.

   — Cooperative agreements.

   — Exchanges (including lands for easements).

   — Block Management Agreements (MDFW&P).

   — Farmers Home Administration and Farm Credit System — Work with interested landowners. These will be entirely voluntary, both for the mortgagor and the mortgagee. Major advantages for all concerned can be gained if these opportunities are creatively developed and applied.

   — Donations.

   — Land and Water Conservation Fund acquisitions.

   — Challenge Grant acquisitions.

   — Patent reservations or reciprocal easement.

6. Protect and manage existing access to public lands (including public mineral resources) in addition to the identification and acquisition of access.

   — Determine the public need for an access network.

   — Become involved in county road dedication and/or abandonments.

   — Work with counties in R.S. 2477 conversion or new rights-of-way for roads under Title V.

   — Enter into cooperative maintenance agreements with counties and state to exchange maintenance work.

   — Become involved in railroad abandonments. When justified, acquire routes across private lands and re-acquired (LU) public lands.

   — Maintain existing road network.

   — Insure public safety.

   — Reserve lands for utility corridors, communication sites, etc.

   — Fire management.

7. Establish and maintain information on existing situation and future needs. Systems that can be used for storing and retrieving information and storing and graphically portraying information are Automated Land & Minerals Record System and Geographic Information System. Develop an automated method or use an existing one for cataloging the following information:

   — Public access.
     — Existing situation.
       Type of access (state highway, county road, easement, full or seasonal closure, etc.).
     — Future needs.
       Type needed (easement — vehicle, foot other; stream; handicap provisions; etc.)

   — Administrative access.
     — Existing situation.
       Type of access.
     — Future needs.
       Type needed.

   — Contingent access.
     — Block management.
     — S-60.
     — Other cooperative agreements.

   — Maps and signs.
     — Coordinate with BLM transportation plans (addresses modes of travel, etc.)

8. Ensure protection of public land and resources from overuse. Manage public lands in a way that associated private lands are not burdened.

   — Vehicle type designations.
   — Controlled use (seasonal or closure).
   — Buffer zones.
   — Type of access use (foot, horseback, vehicle).
   — Amount of use.
   — Access points and location.
   — Informational signing.
   — Volunteer program for patrolling.
   — Special agent involvement.
   — Commodity uses (utilities, etc.).

9. Establish a formal and continuing liaison with other federal agencies, state, county, and local government.

APPENDIX B
ACCESS PLANNING MAP

Map Basis and Interpretation

1. These 1:1,000,000 maps of Montana, North and South Dakota are intended to show the public, BLM, and other agency personnel, and interested groups where BLM access efforts will occur and in what approximate timeframe.

2. The access isograms show areas of access need and an approximate time framework for the action plan.

   — high (0 to 5 years)[1]
   — medium (6 to 10 years)[1]
   — low (11 to 15 years)[1]

3. This access planning is coordinated with earlier BLM Land Categorization. That categorization defined areas of public land retention and disposal for Montana BLM. By definition, disposal emphasizes exchange to acquire needed public resources or to reposition land for effective stewardship.

4. This access planning map is not intended to be parcel, route, or easement specific.

5. Public land access issues for major river systems or other waterways will be addressed in RMPs or other agency plans.

[1] Access unit achievements may shift between timeframes depending on budget, opportunity, workforce, etc.

APPENDIX C
LAND CATEGORIZATION MODIFIER

On June 1984, the State Director Guidance Supplement for Land Pattern Review and Land Adjustment was issued by the Montana State Director of BLM.

That supplement categorized areas of public land to be (1) retained and managed and others to be (2) available for exchange, disposal or further study.

Since the time of that Supplement, certain areas previously categorized for exchange/disposal/further study have been found to possess values that suggest they be recategorized for retention in public ownership. Those areas are identified on the map that accompanies this document, by a C. This document, when final, would change the categorization of these C area lands from disposal/further study to retention.

APPENDIX D
ISSUES AND RESPONSES

The following 34 issues were taken from an excellent public feedback to the August 1988 Draft State Director's Guidance for Access. A number of recommendations are incorporated in the text of this policy document. All 34 issues are presented here, together with a BLM policy response for each issue.

PUBLIC/PRIVATE ISSUES

TOPIC: PUBLIC TRUST VS. PROPERTY RIGHTS

Statement of Issue: A number of respondents spoke of the need for a balanced perspective and the need to advance the interests of the public by obtaining access to public lands. Others spoke of the need to guarantee proper consideration and protection of private property rights in any BLM access management program.

Response: The public is generally entitled to access to public lands. Private property owners must be assured that their property rights will not be compromised, without due process, in any access initiative.

Given this paradox, is there a common ground? If we take the public trust doctrine to its ultimate limit, there seems to be no way in which access could be limited or restricted. If we take the private property rights doctrine to its fullest extension, then there would seem to be no limits or restrictions on exclusion.

Decisions on access must be made on a case-by-case basis, weighing the several principles involved. While the rights of private property are constitutionally protected, we must not forget that the public/community also has rights.

The following should be considered in any public access program:

1. Access will be limited in the future for specific purposes and areas. Land use planning will identify areas that need access and areas that require protection from certain forms of access.

2. Both the public trust and private property rights need clear definitions to promote understanding of the crucial principles.

3. Application of access policy comes down to a "test of reasonableness."

This will require close cooperation between landowners, land users, land or resource management agencies, and local governments. The result is that both public and private interests are equitably served.

TOPIC: IMPROVING LANDOWNER/RECREATIONIST RELATIONSHIPS

Statement of Issue: Several comments focused on need to repair or improve landowner/recreationist relationships.

Response: The cordial relationship between private landowners and recreationists has generally deteriorated over the years. Each has tended to blame the other for the increasing lack of consideration and respect for one another's interest. A public education campaign will be sought to affect and/or improve relationships. To establish a mutual respect between landowners and recreationists, interagency coordination and effort must focus on changing current attitudes of mistrust and disrespect. This will require a commitment of funding and manpower by all parties. With finite limits of both, improving landowner/recreationist relationships will be evaluated with other needs.

If a dialogue is begun between interest groups and agencies, and an educational campaign initiated, mutual respect and trust should develop.

TOPIC: ACCESSING PUBLIC LANDS OVER PRIVATE, OTHER FEDERAL, STATE, OR COUNTY LANDS

Statement of Issue: Respondents asked for clarification of procedures for acquiring access across or to public land.

Response: *State and County Lands* — Acquisition of an easement across state- and county-owned lands is procedurally identical to acquiring an easement across private land. Some steps may be less time-consuming to complete. A permanent exclusive easement across state or county land contains all the rights of such an easement across private land. The lessee of state land does not control the permanent exclusive easement. Temporary nonexclusive easements may be required under different terms.

Private Land — A permanent exclusive easement across private land gives permanent exclusive rights from the landowner and all succeeding landowners. Fair market value is paid for the easement. A temporary nonexclusive easement may include various terms agreeable to all parties. These easements are also appraised at fair market value.

Other Federal Lands — The BLM and U.S. Forest Service have a Memorandum of Agreement whereby either agency will grant a right-of-way reservation to the other across the land it administers. The terms of such an agreement may vary with each agency where one exists. If there is no agreement, a right-of-way can usually be negotiated. The tenure of such rights-of-way may vary according to the need.

TOPIC: ACCESS TO AND ACROSS PUBLIC LANDS

Statement of Issue: Respondents spoke of (1) a need for access across private lands that landlock public land, and (2) a need to insure private lands, in such situations, against illegal encroachment, and (3) a need to cross public lands in order to access adjacent lands administered by other federal or state agencies.

Response: As a land managing agency, BLM requires access to the public lands it administers for a variety of reasons. Administrative access is needed for resource management; public access is needed for the use of those resources. In some cases, access to and across BLM lands would improve access to other public lands so long as it is in concert with the other agency's management programs.

In order to meet the mandate for multiple use of its public lands, BLM must determine where and how access will be provided. In some cases, no access may allow the best management of public lands. However, in most cases, public access to BLM lands is needed to meet management objectives. Because of intermixed surface ownerships, public lands are often accessible only across private lands. In those cases, negotiations with the private landowner are necessary. Acquiring access can be negotiated through purchase of easements, land exchanges, fee purchase of lands, or other means. Public relations is always better served if the BLM and private landowners can reach an agreeable means of providing users access to public lands. If negotiations fail on each avenue explored, eminent domain can be resorted to; however, a need must be clearly shown. Eminent domain will be further analyzed as an issue itself.

In the final analysis, the public has a right to expect adequate protection and management of the public land resources. Where resource use does not conflict with management objectives, all means of accessing the public to those resources should be evaluated and the most acceptable methods implemented.

TOPIC: PERMITS AND LICENSES TIED TO ACCESS OVER PRIVATE LAND

Statement of Issue: Whether to deny use privileges of BLM commodity resources when licensee does not allow public access over his or her associated private property.

Response: Use of federal resources for commercial or noncommercial purposes cannot be denied based on the applicant's denial of access over private lands to public lands by the general public. The applicant has the right to control his private holdings as well as the right to compete for the use of public resources on an equal basis with other citizens. Except in certain R/W cases (Title V of FLPMA), there are currently no laws or regulations which condition issuance of any land use authorization upon the granting of public access across private land. There is a provision in 43 CFR 4130.1-2 dealing with conflicting applications for livestock grazing use, which allows consideration of public ingress and egress across privately-owned or controlled land as *one* of the factors to be considered in allocating grazing use between the conflicting applicants.

A federal manager may deny authorization to use public resources if he is unable to supervise the use (e.g., he may deny a permit if he cannot reach public land for the purpose of supervising the use). This does not mean the public must be allowed access or that the land manager must be allowed access for other public land management purposes.

Further, some commodity uses may be denied if an applicant is given unfair advantage in acquiring that commodity because of restricted access (e.g., timber sales over a specified size must be advertised to be sold and cannot be advertised unless access for the sale can be assured by the Bureau). Again, this is often restricted access for a given purpose and may convey no right to the general public to cross private lands.

In summary, if there is legal access to the public lands in question, the licensee may not prohibit public access to that public land.

TOPIC: RESOURCE DEVELOPMENT AND ACCESS

Statement of Issue: Some respondents asked the following question, "Should BLM investment in resource development be contingent on public access over beneficiary's private land?"

Response: If the justification for investing in an improvement includes use of the project by the general public, then assurance of permanent legal and physical access must be a part of the project design. If access cannot be acquired, the project must be justifiable on some other basis than public use if it is to be built. If an improvement can be justified, but use by the general public would be an added value, the improvement should be planned and the land manager should attempt to negotiate access with the landowner. However, if the improvement stands on its own without public use, the acquisition of access should not be the deciding factor regarding eventual construction. Administrative access for agency personnel, however, may be required as a part of the project plan.

RESOURCE ISSUES

TOPIC: FRAGILE RESOURCES

Statement of Issue: Several responses spoke of concern that any access policy provide for protection of fragile land and resources.

Response: *Wildlife* — Concern for fragile wildlife species or wildlife habitat may be addressed by acquiring access, precluding access, or restricting access. The species to be protected or preserved would determine whether access is required, should be avoided, or restricted.

Soils — Soils on an access area will be examined for stability and suitability for constructing roads or trails. Fragile soils easily damaged or highly erodable will be protected or avoided by erosion protection measures or alternate routes.

Water — Management will preserve and maintain water quality in all access situations. Methods of constructing roads and trails are available that help maintain water quality. Proper conditions for use can protect against water quality degradation.

Threatened and Endangered (T&E) Species — Coordination with other federal and state agencies is necessary to determine the type and location of threatened and endangered species. Such species and habitat will be protected by restricting access or through the exercise of other management alternatives.

TOPIC: ACCESS MAY CAUSE RESOURCE DAMAGE

Statement of Issue: Several respondents made the point that increased access may bring resource threats; i.e., soil erosion from ORV, fire, weeds, property damage, open gates, livestock harassment.

Response: Increased use of an area may very well bring some undesired effects to that land. BLM has authority to regulate uses such as ORVs or other surface-disturbing activities. Noxious weed control may be done by BLM or contracted with the appropriate county. Heavy use areas by the public may be patrolled more frequently by BLM employees or other involved jurisdictions to look for fires and help prevent unauthorized uses and vandalism.

TOPIC: NO MORE ACCESS NEEDED

Statement of Issue: Several respondents stated that access needs should be geared to commodity development which is more critical than public needs. Mining, oil and gas development, and logging put money into the economy and stimulate local jobs in the community. The respondents feel that additional public access would have little effect compared to commercial interests and would be a waste of tax dollars. They also feel the public should individually negotiate for access with fees or cooperation with the land owners.

Response: BLM is responsible, through FLPMA, for insuring that public land and resources are available to the public in a balanced way. The respondent's views represent a pure "business first" approach, and that is a real and significant perspective — especially given the nature of today's economy. But the agency is also responsible to another sector of the American public. If our society is to stay healthy, it must have room and a place to "get away from it all" from time to time. It is this growing aspect of public need and the increased mobility of our society that is the crux of the landowner/recreation conflict. Questions of fees for noncommodity users are addressed in another issue paper in this series.

TOPIC: ACCESS AND WILDLIFE

Statement of Issue: Improved access to public lands may force wildlife relocation to private lands.

Response: Wildlife relocation from public lands to private lands is a possible consequence of improved access. Animal disturbance and hunting pressure will have direct effects on the population's size and density. As a consequence, each situation must be studied and managed based on the problems specific to the site. Consultation, as needed, will occur with such agencies as the Montana Department of Fish, Wildlife, and Parks, the Forest Service, and landowners.

TOPIC: CULTURAL, RELIGIOUS, HISTORIC SITES

Statement of Issue: Several comments expressed concern about the potential overuse, damage, and degradation that may occur with increased access to or near such sites.

Response: Cultural, religious, or historic sites are being inventoried as part of the public land management process. Significant sites are evaluated, recorded, and protected as part of the management obligation.

When access routes are determined, known sites in the immediate vicinity will be reviewed and the entire route inventoried for new sites as part of the National Historic Preservation Act and for National Environmental Policy Act (NEPA) compliance. The nature and significance of all identified sites will be evaluated and priorities established according to management policy and public input. Sites will be monitored in relation to their nature, significance, and extent of use.

TOPIC: ACCESS (LAND AVAILABILITY) FOR INDUSTRIAL AND UTILITY NEEDS

Statement of Issue: Respondents spoke of a need to insure availability of public lands for industrial and utility access and siting.

Response: Montana has in place a well-defined corridor planning mechanism. This interagency (federal-state) process has inventoried and mapped existing lineal facilities (roads, railroads, powerlines, pipelines, etc.) and future needs for the entire state. A process is in place that identifies appropriate siting locations and other locations not well suited or completely closed to siting. Identifying utility corridors and other industrial needs is a part of the access plan. Existing corridors should be used whenever feasible. Avoidance areas and windows (or locations well suited for facility siting) can be identified. Crossing district, state, and international boundaries should be coordinated wherever necessary.

TOPIC: SEASONAL ACCESS RESTRICTION

Statement of Issue: Respondents asked, "In what event, if ever, should access be restricted on a seasonal basis to protect land, resources, or authorized uses (e.g., livestock calving, elk calving, road construction, etc.)?"

Response: Federal regulations allows the restriction or prohibition of all authorized activities in emergency situations for the protection of public resources. Capability exists for managers to totally close public land from all entry in situations that require protection of the resource or the public.

Anytime a manager determines an action will have a long-term deleterious effect on resources, he or she may take emergency measures to restrict that action. However, when an action or a type of action is recurring and the resource values that might be harmed are always present, the restriction should be considered along with the trade-offs with full participation of the public through the Bureau's land use planning process.

ADMINISTRATIVE ISSUES

TOPIC: INTERAGENCY COORDINATION

Statement of Issue: Respondents expressed the thought that, because of fractured public ownership patterns and intermingled jurisdictions, strong intergovernmental coordination would be a must for efficient and responsible achievement One specifically requested involvement of tribal governments.

Response: BLM, USFS, State of Montana, and MACO have begun an interagency effort to address the access issue. In instances where Tribal interests are potentially affected, they will be invited to participate.

TOPIC: PRIORITY OF ACCESS IN MULTIPLE-USE FORMULA

Statement of Issue: Several respondents called for making access the No. 1 priority in BLM management plans. They wanted more and better action on access in Montana and for the BLM to begin and maintain an aggressive access program.

Response: BLM's 5-year strategic goals for Montana, North Dakota, and South Dakota, issued in January 1989, list access as one of BLM's top seven programs. This document further defines specific missions within several of BLM's multiple-use mandates for access. Therefore, within current allocations, Montana BLM will give major emphasis to public land access.

TOPIC: BLM BUDGET FOR ACCESS

Statement of Issue: Respondents asked what the status of BLM people/budget capability is to acquire access.

Response: The present BLM Montana, North Dakota, and South Dakota annual budget is less than $1,000,000 to acquire and administer land and easement acquisitions for access. This aggregates exchange, easement, and right-of-way funding for Montana operations. With that level of budget, approximately 30 cases are closed each year. Approximately 2,000 easements and/or land adjustments have been identified as being needed in the next 15 years or approximately 130 cases/year.

TOPIC: TIMEFRAME FOR IMPLEMENTING ACCESS PLAN

Statement of Issue: Questions were raised concerning whether the timeframe might be accelerated from 15 to 10 years and if BLM could adhere to a 15-year schedule.

Response: A tentative 15-year schedule for access acquisition was identified on the map accompanying the access planning supplement. Specific time elements associated with the high, medium, and low priority areas are only current estimates of acquisition targets. These estimates are not rigid and could vary depending upon changing program emphasis, staff availability, budget levels, and needs. The areas' priorities could also change depending upon the demand, the resources, and the degree of cooperation from private landowners. Shortening the timeframe for acquiring access may be a possibility; however, extensions of acquisition schedules may also be necessary, depending upon a variety of influencing factors including budget considerations.

While the illustrated priorities and time elements will be followed as much as feasible, expectations should be tempered with the reality that political, financial, and demand factors can effect implementation.

TOPIC: PROGRESS IN ACCESS PLAN IMPLEMENTATION

Statement of Issue: One respondent spoke of a need for BLM to better inform the public of agency progress in all aspects of access plan implementation.

Response: Some of the methods for disseminating access information are media news releases, posting public information at BLM offices, occasional legal notices, periodic progress reports, and maps. The most expedient and cost-effective means is probably a combination of news releases and office postings of public information. News releases offer the flexibility of providing information on an area-of-interest basis and with an as-acquired frequency. Public information stations at BLM offices can provide information ranging in scope from local to national. The combination of methods, to meet local needs, should allow access information to be effectively brought before the public at least cost.

TOPIC: BLM COORDINATION WITH FmHA AND/OR FCS

Statement of Issue: Several of the respondents took issue with Appendix A, subparagraph 5 which states, in part:

> "Obtain access for the type of use desired, or establish public land ownership patterns that guarantee availability of sites or areas. Accomplish this by the following: Farmers Home Administration and Farm Credit System — loan restructuring or write-downs for public access provisions."

They saw this guideline as an administrative tool that might result in involuntary concessions of easements, adversely affecting the whole property value of the grantee and perhaps their neighbors.

Another respondent made the point that FCS was not a government agency and was not to be considered in any context related to public access planning or management.

Response: FmHA has recommended revisions to the draft. The draft guidance is changed to reflect the FmHA recommendations. Discussions with both FmHA and FCS representatives suggested participation by any mortgagor or bank would be entirely voluntary. However, if such an understanding were properly designed, a variety of land adjustment options could be made available (i.e.. land exchanges, sale, or purchase of easements) using specific conservation values as criteria for the adjustments, restructuring, or write down of a loan. If properly designed, greater management efficiencies can be achieved for all concerned. Several of these procedures could qualify the mortgagor and/or bank for tax advantages. It is timely and appropriate that FmHA and BLM design coordination agreements to help the borrower, the lender, and hopefully, the public domain (BLM) in the course of the everyday workings of all three. Land trades, easements, or rights-of-way may cure some long-standing problems.

The point was also made, and well taken, that FCS is not a federal agency.

TOPIC: BLOCK MANAGEMENT

Statement of Issue: Several respondents requested clarification on what block management is and how it relates to public land access.

Response: The Montana Department of Fish, Wildlife, and Parks (FWP) initiated block management to encourage increased availability of large blocks of mixed ownerships of land for hunting. The rationale for such a program was to slow down, as much as possible, the rapid closure of private lands. Ranches open for hunting could include lands with a variety of ownerships; including federal, state, and private.

In essence, the block management program begins with communication between the landowners and FWP to develop a workable contract. The contract establishes the conditions for granting use by hunters and funding needed to provide supervision of that use. FWP commitment is monetary reimbursement to the landowner for his personal services such as hunter check-in, periodic patrols, and others. Or, in some cases, FWP may hire a temporary employee to supervise the use. Control of hunters by the landowner is, generally, the preferred method. In addition to responsibility for the financial aspect of the program, FWP also prepares maps for hunters and signs the hunting area. The block management program is strictly a voluntary, albeit formal, agreement between the landowner and FWP. The landowner has flexibilities built into the contract.

LEGAL ISSUES

TOPIC: EMINENT DOMAIN

Statement of Issue: The potential use of the power of eminent domain.

Response: Eminent domain is the power of the sovereign to take private property for public use. This process may be used only after all attempts at negotiation have failed. The agency must provide acceptable justification for using this power to the Department of Justice. When the evidence is in, the Justice Department files a declaration of taking in federal court. The agency deposits the appraised value of the property with the court, and the agency receives title to the easement at this time. The court then determines the final compensation for the easement.

In recent years Appropriation Acts for BLM have required notification, to congressional committees, of proposed eminent domain actions by the agency.

TOPIC: PRESCRIPTIVE USES

Statement of Issue: A number of respondents suggested a need for clearer definitions, by BLM, of qualifications (or disqualifications) for access in doctrines of law dealing with prescriptive use.

Response: BLM is unable to provide any substantive clarification on this issue. First, prescriptive use law is largely governed by the state and each of the three states herein effected (Montana, North Dakota, and South Dakota) will have differing laws on this subject. Second, people versed on this topic acknowledge that the real criteria for determining prescriptive right qualification is found in case law contained in individual court cases processed over time. In most, significant differences in court determinations can be found.

Therefore, it is best for BLM to state that such matters must be handled on a case-by-case basis, principally under state law.

TOPIC: STREAM ACCESS LAW AND BLM LAND ACCESS

Statement of Issue: A question was posed—Who will rule, federal or state authority, if BLM closes an area to public access when that same area is accessible via definitions of the Montana Stream Access law?

Response: The Montana Stream Access law provides access to a stream between the high-water marks. It does not provide access to adjacent land. If public lands bordering a stream are closed to public use, they are closed to access from streams as well as roads. While it seems unlikely that a federal-state conflict would develop over this access issue, the answer is that the federal determination would prevail.

In the instance of lands acquired by the government into federal ownership, those lands would be subject to the Montana Stream Access law as well as any other title encumbrances established during the period of nonfederal ownership.

TOPIC: RS 2477 TO TITLE V RIGHTS-OF-WAY

Statement of Issue: Appendix A, subparagraph 6, line five states "work with counties in RS 2477 conversion or new rights of way for roads under Title V." One respondent requested clarification.

Response: Revised statute (R.S.) 2477 was a federal law that allowed any qualifying public agency, by construction of a public road or trail upon unappropriated public lands, to be granted a right-of-way for that road or trail by virtue of the construction. Any such rights-of-way, qualified prior to the passage of FLPMA (October 21, 1976), will remain in good standing. Since there were no requirements for federal land record notation, those rights-of-way are not usually of public record. The general public and local landowners are often frustrated by not being able to determine location or legal status of the road or trail involved. Conflicts in land uses can occur as a result.

With passage of FLPMA, any public entity who desires to use public lands for road or trail purposes must first apply for and receive a right-of-way authorizing the use. As a result, the road or trail is posted to the federal land records and filed with the affected county.

Efforts are underway in several Montana counties to convert RS 2477 grants to Title V (FLPMA) grants; this brings the public road network into the land record system and insures greater protection from unintentional encroachment. Once noted to the public records (federal and county), the public can more easily identify the legal access routes.

TOPIC: USE OF NONEXCLUSIVE EASEMENTS

Statement of Issue: Respondents asked for clarification of what a "nonexclusive easement" is.

Response: A nonexclusive easement is normally obtained for a defined period of time or specific purpose. A nonexclusive easement may be used when full control (or public access) is not needed. The nonexclusive easement may be temporary or perpetual. This type of easement is most commonly used to guarantee access for BLM licensees, such as timber purchasers, to relatively small tracts of BLM land or quantities of timber. Administrative access for BLM employees supervising use is also covered by a nonexclusive easement.

TOPIC: ABANDONED RAILROAD RIGHTS-OF-WAY FOR PUBLIC ACCESS ROUTES

Statement of Issue: One respondent suggested all abandoned railroad rights-of-way revert to the public and be reserved as corridors for public access.

Response: Most railroad rights-of-way are easements over land owned or held, in fee, by someone other than the railroad. The original easement Title document will usually specify terms of the grant, including disposition of the easement on relinquishment or abandonment. In many cases, the land use reverts to the underlying or adjacent owner. In other cases, railroads purchased the right-of-way, in fee, and therefore can dispose of the property as they choose. In those instances where the easement is on public lands, an allocation of the abandoned right-of-way for access purposes will be given special consideration in land use plans.

New legislation has also been enacted for abandoned railroads. On October 5, 1988, President Reagan signed the National Trails System Improvement Act of 1988, repealing an old statute which permitted federally-granted railroad rights-of-way to fall into private ownership after railroad abandonment. Under the new law, qualifying corridors will revert to federal ownership upon abandonment and may be used to establish recreational trails. Abandoned railway corridors which are located within or are adjacent to national parks, refuges, recreation areas, forests, or other federal lands will be merged into these lands and managed as trails. Abandoned corridors that do not have this proximity to federal lands may be transferred to state or local public agencies for public recreation use or access.

The law also provides a stipulation that places the proceeds from the sale of an unsuitable corridor in the federal Land and Water Conservation Fund for later use for funding state and local land acquisition efforts. Regulations for this legislation are now being drafted by the National Park Service.

RECREATION ISSUES

TOPIC: ACCESS FOR ALL CITIZENS

Statement of Issue: Some respondents spoke of their distress with wilderness or other land management which prohibits access of older or handicapped people.

Response: BLM is challenged to provide balance for all people, whether industry or recreationists, backpackers or handicapped, rural or urban, horseback riders or 4x4 fans. Access in certain areas, such as to wilderness areas, may follow only horse or foot trails. Areas with adequate motor vehicle access may have improved access with foot trails. The type of access will be determined on a case-by-case basis as a result of need, amount, type of use, impact on resources, and terrain.

Motor vehicle access will similarly be determined by need and type of use. Harvesting of natural resources, such as timber and minerals, usually requires vehicular access. Recreational access may vary according to use and terrain. Type of access should be balanced to accommodate as many needs as feasible for a specific area. One area that is hard for many local people to understand is the mandate of a federal agency to jointly plan for national, regional, and local needs.

TOPIC: RECREATIONAL USE FEE

Statement of Issue: Respondents suggested recreationists be required to pay for use of public lands.

Response: This is not an access issue in the sense of ingress or egress, but addresses the issues of compensation for resource use. By law the United States has to receive fair market value of the public lands and their resources (FLPMA-Section 102a(9)). Other legal and policy statements also mandate fair market value for public lands and resources. Fees for commercial recreation use of BLM lands are now charged (outfitters, ORV hillclimbs, etc.). In addition, fees are charged for use of developed sites (e.g., campgrounds, ski areas). Fees for casual visitation or recreation use are not collected.

Generally, public lands in Montana and the Dakotas under BLM jurisdiction, are in a scattered pattern mixed with private lands. At this point, BLM has not devised a way to charge equitably for the diverse recreation uses occurring on public lands.

TOPIC: SIGNING AND MAPPING

Statement of Issue: Several respondents spoke of the need for better signing and mapping of public lands and access routes. Others asked questions about the availability of maps.

Response: Marking BLM land and available access routes has several benefits. Clear signs prevent trespass and guide users to public lands available for recreation. However, funding and manpower limitations make some signing impractical, and some isolated scattered tracts may never be adequately identified. Signing is an ongoing activity, with property and access identification focused primarily upon those areas where the greatest conflicts between public and private interests occur.

One of the most administratively demanding facility identification activities is resolving illegal closure of public lands. Unauthorized boundary posting is expanding in Montana and the Dakotas. Resolving public land posting where legal access exists is an increasing workload, particularly during the hunting seasons.

Good maps and correct land-user orientation on the ground are vital to maintaining good landowner/public relations for recreation use of public lands. Consequently, mapping and access identification will continue to be priority items.

One possible solution to agency shortages in funding and manpower is to engage groups such as sportsmen and landowners in cooperative efforts to sign public lands and access routes. Efforts will begin in this regard.

The 1:100,000 scale surface ownership map is the one commonly available for sale at BLM offices. These maps are periodically updated to show land ownership changes and new routing of roads. The new series of maps will, in some cases, show all county, state, and federal roads which can be used to access the public lands. USGS, Forest Service, state, or county and other specialized BLM maps may also be available, depending on the area.

As an example, seven cooperating federal and state agencies, including the BLM, have issued an interagency visitor map for southwest Montana. The map delineates surface ownership as well as indicating areas designated open, limited, or closed to motorized travel. The BLM has also issued special interest maps covering the Upper Missouri National Wild and Scenic River and is developing a new Recreation Access Guide Series as well. The new series map is printed on durable waterproof paper, provides shaded topographic relief, and delineates recreational opportunities not normally found on other BLM maps. The first map printed thus far covers the Zortman-Winnett area.

Local BLM offices generally have maps on hand showing public roads and access. These are available to the public for review or for copying on their own maps. Specialists at those offices are also familiar with land ownership changes and route conditions.

TOPIC: PUBLIC ACCESS AND OUTFITTER/GUIDES POLICY

Statement of Issue: Allowing outfitters and guides to establish control or exclusive use of public land, through a special recreation use permit, was a concern of several respondents.

Response: Although a special recreation permit does allow use of specified public lands and/or related waters administered by BLM, there are limits to what a permit allows. Some of those limitations follow:

— BLM does not authorize permitted activity on isolated BLM lands which are void of legal access without permission from the owners of access routes. Where land patterns are mixed, the outfitter needs to secure prior written permission to access federal land;

— A special recreation permit by BLM does not guarantee exclusive use of the public land, campsite locations, or hunting areas. However, campsites can be reserved through advance arrangements. This means there is no exclusive right of use by the permittee, and the nonguided public has the right to use all public lands, except reserved campsites;

— A special recreation permit does not establish nor imply recognition of any claimed historical use rights by an outfitter on public lands;

— Permittees and their clients are not to interfere with other uses occurring on the public lands (e.g., grazing, recreational uses, hunting, fishing, etc.) except as allowed by permit;

— The permit does not grant the permittee and/or his client the use of public lands which are otherwise limited or closed (e.g., off-road vehicle designations);

— Special recreation permits will be issued for only the area of land needed for the intended use; and

— The desired level of use or the carrying capacity for the affected permit areas will be determined, and the permit will stipulate this and any other management provisos.

OTHER ISSUES

TOPIC: SPECIFIC AREA RECOMMENDATIONS

Statement of Issue: At least five respondents raised questions regarding district boundary lines and the BLM access priority areas for the Snowy Mountains, Sweet Grass Hills, South Phillips and South Valley counties, and South Dakota.

One of these incoming responses asked why, particularly, no access priority is suggested for large blocks of public land in South Phillips and South Valley counties.

Response: BLM personnel revisited their access priority areas for the Snowy Mountains and Sweetgrass Hills. Their conclusion is to let the initial determinations stand. Any future access actions will involve further case-specific work, including public input. Those concerned will have the opportunity to provide input at that time.

As for South Phillips and South Valley counties, in the judgment of the BLM personnel making the needs inventory that led to development of the access map, sufficient public road systems are now available to satisfy public access requirements for these areas for the foreseeable future. The planning effort now underway (Judith, Valley, Phillips Resource Management Plan) provides an opportunity for public input on any BLM management concern. Anyone having suggestions on this matter should express themselves during the public input opportunity for this or any future planning efforts.

TOPIC: LAND EXCHANGE

Statement of Issue: Many of the responses addressed land exchange.

Many people spoke in favor of land exchange as the best land acquisition tool for access work. Some spoke strongly for exchange in the interest of improving BLM land patterns and their management for all purposes including access.

One respondent asked whether land (full surface ownership) might be exchanged for easements.

Response: Montana BLM began an aggressive three-state land exchange program in 1982. That effort continues. Also, BLM policy provides for exchange of land for interest in land (e.g., easements).

TOPIC: MINERAL AND OTHER RESOURCE USES

Statement of Issue: One comment spoke to the need to insure that commodity users (timber, mining, etc.) as well as recreationists be offered equal access consideration on public lands. Another comment stated there is and will be no problem for commodity resource users in obtaining access for their needs. A third comment asked that public lands be kept open, and that some now closed be opened for mineral exploration and development.

Response: The land ownership patterns in Montana and throughout the west involving private, federal, and state ownerships add to the complexity of access and resource use. Legal access can be acquired through all three types of land via right-of-way, county road, or other methods as provided by law. Legal remedies, sometimes requiring considerable effort, are available to the developer as well as public agencies to secure required access.

A most important issue of the access program is keeping lands open and available for commodity and noncommodity resource use. Public land decisionmakers must carefully weigh an array of economic, social, and conservation issues when committing public lands to exploration, development, or use, *or* when restricting uses of the land.

TOPIC: PARCEL SIZE

Statement of Issue: Some of the respondents stated that BLM should concentrate on obtaining access only to larger tracts of land. Others spoke of a need to retain smaller, isolated tracts of public land.

Response: We agree in most cases that larger tracts offer more advantages for multiple-use resource management. With a large tract greater benefits can occur, resources can be managed more efficiently, and localized problems mitigated.

Small tracts are more subject to surrounding activities, and their access problems (physical and legal) and their isolation make management more difficult. Access to smaller tracts, however, will be considered on a case-by-case basis, primarily for a special resource value to the public such as access to a significant cultural/historic site, a potential high-use recreation site, or to improve access to lands managed for multiple use by the state or other federal agencies.

Other respondents expressed concern that the disposal of small tracts would hurt wildlife. They feel that small tracts, in spite of their problems, are natural resource islands which benefit wildlife. Disposal tracts fall into two basic types. The first is made up of tracts that are subject to the same use as the surrounding private land. They are ownership islands only and offer no haven. The second type by terrain and location will provide habitat because of their physical characteristics regardless of ownership.

Before land is acquired or disposed of, the action is subjected to a multi-resource environmental analysis and public review as required by NEPA to ensure tracts of all sizes are previewed prior to disposition.

APPENDIX E
GLOSSARY[1]

Abstract of Title. A condensed history of the title to land, consisting of a summary of the operative portions of all the conveyances, of whatever kind or nature which in any manner affects the land, or estate or interest therein, together with a statement of all liens, charges, or liabilities to which the same may be subject, and of which it is in any way material for purchasers to be appraised.

Access Defined.

Webster — **a.** Permission, liberty, or ability to enter, approach, communicate with, or pass to and from; **b.** Freedom or ability to obtain or make use of; **c.** A way or means of access; and **d.** The action of going to or reaching.

BLM — Access is the physical ability to reach a particular place or area **or** the permission to do so. For the public to legally have access to public land, they must have **both** a physical way to get there (waterway, foot/horse trail, or road) and permission (easement, right-of-way, or management sanction) allowing the particular type of physical access. For the Bureau to serve the public as a whole in obtaining access, we must obtain irrefutable rights-of-way or exclusive easements for the type of physical access needed, or establish public land ownership patterns that guarantee availability of sites or areas. Then signed trails or roads can be constructed and maps provided to ensure correct identification of their lands by the public.

Acknowledgement. Formal declaration before authorized official, by person who executed instrument, that it is his free act and deed.

Activity Plan. Site specific planning which precedes actual development. This is the most detailed level of BLM planning.

Appraisal. An unbiased estimate of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate.

Assignment. A transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or rights therein. The difference between an assignment and a sublease is that an assignment is for the entire unexpired term.

Attest. To bear witness to; to bear witness to a fact; to affirm to be true or genuine; to act as a witness; to certify to the verity of a copy of a public document, formally by signature; to make solemn declaration in words or writing to support a fact; to signify by subscription of his name that assignor has witnessed the execution of the particular instrument.

Bargain and Sale. In conveyancing the transferring of the property of a thing from one to another, upon valuable consideration, by way of sale. The term "bargain and sale deed" is usually applied to a deed which carries no warranty.

BLM Land Categorization. In June 1984, a document and map were issued by the Montana BLM State Director which defined areas of public land retention and enhancement and areas generally targeted for public disposal — primarily via exchanges. The document and maps were issued following extensive public involvement.

Block Management. A relatively new property owner/manager coordination mechanism being administered by the Montana Department of Fish, Wildlife and Parks. The program is designed, principally, to mitigate landowner impact while making more lands available for hunting use.

Centerline (C). A location for a linear facility within a route. (see Route)

Challenge Grants. Federal funds, available on a 1:1 matching basis, for certain natural resource enhancement efforts.

Chain of Title. Successive conveyances, affecting a particular parcel of land, arranged consecutively, from the Government or original source of title down to the present holder.

Closure. A formal process of restricting public lands from any encroachment, or limited uses, to protect specified resource values.

Cloud on Title. An outstanding claim or incumbrance which, if valid, would affect or impair the title of the owner of a particular estate; mortgage judgment, tax levy, etc., may all, in proper cases, constitute a cloud on title.

[1] Not all these terms will be found in the Access Supplement document, but all are important in the language of Access management.

Color of Title. The appearance or semblance of title. Also termed "apparent title." Any fact, extraneous to the act or mere will of the claimant, which has the appearance on its face of supporting its claim or present title to the land, by which for some defect, in reality falls short of establishing it. "Color of title" is not synonymous with "claim of title." To constitute "color of title" there must be a paper title to give color to the adverse possession, whereas a "claim of title" may be shown wholly by oral expression.

Condemnation. In real property law, the process by which property of a private owner is taken for public use, without his consent, but upon the award of payment of just compensation, being in the nature of a forced sale and condemner stands toward owner as buyer toward seller.

Consideration. In contracts, the inducement of a contract. The cause, motive, price or impelling influence which induces a contracting party to enter into a contract. Consideration means something that is of value in the eye of the law. Nothing is consideration that is not regarded as such by both parties. "Price" and "considerations," though sometimes the same, are not always identical. Considerations are either executed or executory; express or implied; good or valuable.

Contract. A promise or an agreement between two or more persons that creates, modifies, or destroys a legal relation. An agreement, upon sufficient consideration, to do or not to do a particular thing.

Control. To exercise restraining or directing influence over; regulate; restrain; dominate; to hold from action; govern. To control a thing is to have the right to exercise a directing or governing influence over it.

Convey. To pass or transmit the title to property from one to another; to transfer property or the title of property by deed or instrument under seal. Used popularly in sense of "assign," "sale," or "transfer." Convey relates properly to the disposition of real property, not to personal.

Conveyance. In real property law, and in the strict legal sense, a transfer of legal title to land. In the popular sense, it denotes any transfer of title, legal or equitable. An instrument in writing under seal, by which some estate or interest in lands is transferred from one person to another; such as a deed, mortgage, etc.

Cooperative Agreement. Documenting relationship between BLM and other parties for the purposes of mutual assistance; activities in which no obligation or exchange of federal funds, products, or services is involved.

Corridor. An area of land (generally 2 miles in width) that is generally suitable for siting a linear facility.

Covenant. In contracts, an agreement, convention, or promise of two or more parties, by deed in writing, signed, sealed, and delivered, by which either of the parties pledges himself to the other that something is either done or shall be done, or stipulates for the truth of certain facts.

Damages. A just compensation or reparation for loss or injuries sustained. The award made to a person because of a legal wrong done to him by another, such as in condemnation.

Declaration of Taking. The first of the pleadings on the part of the plaintiff in an action of condemnation.

Deed. A written instrument, signed, sealed, and delivered, by which one person conveys land, tenements, or hereditaments to another. The term may include a mortgage of real estate. A lease, under seal, for exceeding 21 years is also held to be within the term. A deed cannot be revoked.

Devest. To deprive; to take away; to withdraw. Usually spoken of an authority, power, property, or title; as the estate is devested.

Disclaimer. A repudiation or renunciation of a claim or power vested in a person or which he had formerly alleged to be his. Also, the declaration, or instrument, by which such disclaimer is published.

Document. An instrument on which is recorded, by means of letters, figures, marks, matter which may be eventually used. A deed, agreement, title paper, letter, or other written instruments used to prove a fact.

Dower. A provision which the law makes for a widow out of the land or tenements of her husband, for her support and the nurture of her children. A species of life estate which a woman is, by law, entitled to claim on the death of her husband, in the lands and tenements of which he was seized in fee during the marriage, and which her issue, if any, might by possibility have inherited. The term, both technically and in popular acceptance, has reference to real estate exclusively.

Easement. A right to use the land of another for some specified purpose.

- **Exclusive.** Another expression for control as defined above.
- **Nonexclusive.** A term used to describe the rights conveyed when they result in less than control as defined above.

Eminent Domain. The power to take private property for public use.

Encroachment. An encroachment upon a road is a fixture, such as a wall or fence, which illegally intrudes into or invades the road or encloses a portion of it, diminishing its width or area, but without closing it to travel.

Encumbrance. (Incumbrance) Any right to, or interest in, land which makes it subject to a charge or liability. Encumbrances include mortgages, and other voluntary charges, judgment liens, attachments, inchoate rights of dower, mechanic's liens, leases, restriction in deeds, encroachments of a building, an easement or a right-of-way, accrued and unpaid taxes and the statutory right of redemption. The term "encumbrance" is sometimes used to denote a burden or charge of personal property; e.g., a chattel mortgage on a stock of goods.

Engineer's Station. Points given numerical number along a traverse line progressing from the point of beginning, measurements being made from point to point along an open traverse or around the curves. Measurement is carried forward from the point of beginning, each point being marked with the station number, and normally set at all full 100-foot intervals and at any plus station that may be established.

Escheat. A reversion of property to the state in consequence of a want of an individual competent to inherit. The state is deemed to occupy the place and hold the rights of the feudal lord. It indicates the preferable right of the state to an estate left vacant and without there being anyone in existence able to make claim thereto.

Escrow. A scroll, writing, or deed, delivered to a third person, to hold or keep until some act is done or condition performed and then to be delivered to the grantee or obligee, at which time it takes effect and becomes a deed to all intents and purposes.

Estate. The interest which anyone has in lands or in any other property. "Estate" is constantly used in conveyances in connection with the words "right," "title," and "interest" and is, in a great degree, synonymous with all of them.

Et Al. And others; and another.

Et Seq. And following.

Et Ux. And wife.

Et Vir. And husband.

Evaluation. The study of the nature, quality, or utility of a parcel of real estate or interests therein, or aspects of, real property without reference to a value estimate.

Exception. In deeds or conveyances, a clause by which grantor excepts something out of that which he granted before by the deed. An exception withdraws from operation of deed part of thing granted which would otherwise pass to grantee.

Executor. A person appointed by a testator to carry out the directions and requests in his will, and to dispose of his property according to his testamentary provisions after his decease.

Executrix. A woman who has been appointed by will to execute such will or testament.

Fair Market Value. The most probable price in cash, terms eqivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuring neither is under duress.

Fee Simple Title. An estate without limitations or restrictions.

FLPMA. Public Law 94-579 of October 21, 1976. The Organic Act of the Bureau of Land Management and policy mandate for certain other federal agencies. Purpose of the law is to establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes.

Free and Clear. The title to property is said to be "free and clear" when it is not incumbered by any lien; but it is said that agreement to convey a land "free and clear" is satisfied by a conveyance passing a title.

Grant. To bestow; to confer. A generic term applicable to all transfers of real property. As distinguished from a mere license, a grant passes some estate or interest, corporeal or incorporeal, in the lands which it embraces.

Grantee. The party rendering the consideration and receiving the rights conveyed. Upon completion of the transaction, the holder of the dominant estate or tenement.

Grantor. The party receiving the consideration and surrendering the rights conveyed. Owner of the servient estate.

Heir. One who inherits property, whether real or personal, either by will or by law. A person who succeeds by the rules of law, to an estate in lands, tenements, or hereditaments, on the death of his ancestor, by descent and right of relationship.

Highest and Best Use. The reasonable and probable use that supports the highest present value, as defined as if the effective date of the appraisal.

Ingress, Egress, and Regress. These words express the right of a lessee to enter, go upon, and return from the lands in question.

Instrument. A written document; a formal or legal document in writing, such as a contract, deed, will, bond, or lease. A document or writing which gives formal expression to a legal act or agreement, for the purpose of creating, securing, modifying, or terminating a right.

Interest. The most general term that can be employed to denote a property in lands or chattels. In its application to lands or things real, it is frequently used in connection with the term "estate," "right," and "title," and includes them all. The terms "interest" and "title" are not synonymous. "Interest" more particularly means a right to have the advantage accruing from something; a partial or undivided right, but less than title.

Intestate. Without making a will. A person is said to die intestate when he dies without making a will or without leaving anything to testify what his wishes were with respect to the disposal of his property after his death.

Isogram. A line on a map along which there is a constant value. In the Montana BLM Access supplement, isograms are used to reflect zones of access need and priority for those needs.

LWCF. The Land and Water Conservation Fund is a stand-alone federal appropriation earmarked to be used in acquisition of important recreation oriented lands or resources.

Judgment. The official and authentic decision of a court of justice on the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination.

Just Compensation. As regards property taken for public use, the term is comprehensive and includes all elements, but does not exceed market value. It means a settlement which leaves one no poorer or richer than he was before the property was taken. It is the value of property taken at time of taking, plus compensation for delay in payment, if appropriate, and plus damages to the owner for value of use of property from date of taking possession to date of judgment if possession is taken by condemnor prior to judgment.

Lease. Any grant or permit of use that includes contract for exclusive possession of lands or tenements for a determinate period; contracts for possession and profits of lands or tenements. A lease not to be performed within 1 year or more from its date, must be in writing to comply with the Statute of Frauds.

Liaison. Communication for establishing and maintaining mutual understanding: interrelationship.

Licensee. Any party that is authorized and given permission to do a particular act on the land of another without possessing any estate or interest therein, a personal, revocable, and unassignable privilege. In no event is a licensee an agent of the United States.

Lien. A charge or security or incumbrance upon property; a charge or claim on property for payment of some debt obligation or duty. Liens are "property rights."

Multiple Use. Management of the public lands and their various resource values, so they are utilized in the combination that will best meet the present and future needs of the American people (FLPMA, Sec. 103(c)).

Notary Public. A public officer whose function is to administer oaths; to attest and certify, by his hand and official seal, certain classes of documents, in order to give them credit and authenticity; to take acknowledgments of deeds and other conveyances, and certify the same.

Offer. A proposal. As an element of an easement, a proposal to purchase the easement. It must be made by the person who is to make the promise and it must be made to the person to whom the promise is made. It may be made either by words or by signs either orally or in writing and either personally or by messenger, but in whatever way it is made, it is not in law an offer until it comes to the knowledge of the person to whom it is made.

Parcel. A description of property, formally set forth in a conveyance, together with the boundaries thereof, for its easy identification.

Paralleling. Means locating a proposed linear facility directly adjacent to or overlaying the right-of-way of an existing linear utility, transportation, or communication facility.

Partnership. A voluntary contract between two or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them.

Patent. A grant of some privilege, property, or authority, made by the government or sovereign of a country to one or more individuals. A land patent is a muniment of title issued by a government or state for the conveyance of some portion of public domain.

Permit. A written license or warrant, issued by a person in authority, empowering the grantee to do some act not forbidden by law, but not allowable without such authority.

Personal Property. Movable items, not permanently affixed to or part of real estate.

Possession. That condition of facts under which one can exercise his power of a corporeal thing at his pleasure at the exclusion of all other persons.

Premises. In conveyancing, that part of a deed which precedes the habendum, in which are set forth the names of the parties with their titles and additions and in which are recited such deeds, agreements, or matters of fact as are necessary to explain the reasons upon which the present transaction is founded; and it is here, also, the consideration on which it is made is set down and the certainty of the thing granted.

Probate. The process of proving a will. The proof before an ordinary, surrogate, register, or other duly authorized person that a document produced before him for official recognition and registration and alleged to be the last will and testament of a certain deceased person is such in reality. A judicial act or determination of a court having competent jurisdiction establishing the validity of a will.

Property Rights (Real Property). The earth's surface, the air above, and the ground below, as well as all appurtenances to the land; including buildings, structures, fixtures, fences, and improvements erected upon or affixed to the same. The term real property includes the interests, benefits, and rights inherent on the ownership of real estate. The Constitution of the United States is explicit in defending the rights of ownership of private land. The Fifth Amendment addresses the issue by stating, "Nor shall private property be taken for public use, without just compensation." The whole of private property rights is likened to a "bundle of sticks." The removal or alteration of any stick is a taking of private property and necessitates negotiation and, if requested, compensation.

Public Trust. The public trust doctrine evolved to protect the public's interest in certain unique, valuable and irreplaceable natural resources. Historically, the doctrine's purpose was to preserve public ownership of navigable waters and the underlying beds to protect public rights of navigation, commerce, and fishery. Courts in various states have expanded both the public rights and the waters protected by the doctrine.

Quiet. To render secure or unassailable by the removal of disquieting causes or disputes.

Quitclaim. In conveyancing, to release or relinquish a claim; to execute a deed of quitclaim. Also a release or acquittance given to one man by another in respect of any action that he has or might have against him. Also acquitting or giving up one's claim or title.

Real Estate. The physical land and appurtenances including structures affixed thereto.

Real Property. The interests, benefits, and rights inherent in the ownership of physical real estate.

Reciprocal Right-of-Way. An agreement wherein for consideration of the authorization to use another's property for right-of-way purposes, an owner of land or other land rights gives permission for use of their own land or rights-of-way.

Release. In estates, the relinquishment of some right or benefit to a person who has already some interest in the tenement which qualifies him for availing himself of the right relinquished.

Reservation. In the context of FLPMA, an agency may reserve (in similar fashion to a right-of-way) land rights that insure the availability or protection of lands or land rights for future needs.

Right-of-way. In its strict meaning, it is the right of passage over another man's ground; and, in its legal and generally accepted meaning in reference to a roadway, it is a mere easement in the lands of others, obtained by lawful condemnation to public use or by purchase. It is unusual to use the term to apply to an absolute purchase of the fee simple of land to be used for a roadway or other kind of way.

"Right-of-way" has twofold significance being sometimes used to mean the mere intangible right to cross, and often used to otherwise indicate that strip of land upon which a road is built.

RMP (Resource Management Plan). A comprehensive long range plan (± 10 years) for public land and resource management for a given area. These areas typically aggregate several counties and often are synonymous with BLM Resource Areas.

Route. In context of access planning, a route is a general location for siting a specific easement or other land right. Most often spoken of as a lineal zone within which a centerline for an easement or right-of-way will be located. Normally 1/2 mile or less in width.

SS: Scilicet To-wit (Latin). A word used in pleadings and other instruments as introductory to a more particular statement of matters.

S-60. A BLM/private owner agreement concept that provides for certain management restrictions (including closure) of public lands in return for availability of private property rights for the public.

Split Estate. A term meaning that surface and mineral estates, in land, are severed from each other and thus stand alone.

Tax. A peculiar burden laid upon individuals or property to support the government. Taxes are divided into **direct** which includes those assessed upon the property, person, business, income, etc., of those who are to pay them, and **indirect** which are levied on commodities before they reach the consumer.

Tax Certificate. A certificate of the purchase of land at a tax sale thereof, given by the officer making the sale, and which is evidence of the holder's right to receive a deed of the land if it is not redeemed within the time limited by law.

Tenancy. The estate of a tenant as in the expressions "joint tenancy" and "tenancy in common."

Tenant. One who holds or possesses lands or tenements by any kind of right or title.

Tenement. Everything that may be held, provided it be of a permanent nature, whether it be of a substantial (land, etc.) or an unsubstantial (rent, etc.) kind.

Testate. Having made and left a legally valid will. If a deceased's property passed to the devisees under his will, then he died "testate"; but if no part of the property of his estate passed by will, but by the statute of descent and distribution, then he died "intestate."

Transportation Plan. A document which portrays the Bureau's transportation system needed for administration and multiple use activities. May include roads, trails, waterways, airstrips, heliports.

Title. In real property law, title is a means whereby the owner of lands has the just possession of his property.

Value. When used in reference to property, "value" has a variety of meanings according to the connection in which the word is employed. It may mean the reproduction cost of property or it may refer to its purchasing power, for example:

Valuation. The process of estimating market value investment value, insurable value, or other properly defined value of an identified interest or interests in a specific parcel or parcels of real estate on a given date.

Voucher. A receipt, acquittance, or release, which may serve as evidence of payment or discharge of a debt or to certify the correctness of accounts. When used in connection with disbursement of money, a written or printed instrument in the nature of a bill of particulars, that shows on its face the fact, authority, and purpose of disbursement.

Waiver. The abandonment or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity, or wrong.

Warranty. In real property law, a real covenant by the grantor of lands, for himself and his heirs, to warrant and defend the title and possession of the estate granted to the grantee and his heirs, whereby, upon the eviction of the grantee by paramount title, the grantor was bound to recompense him with other lands of equal title.

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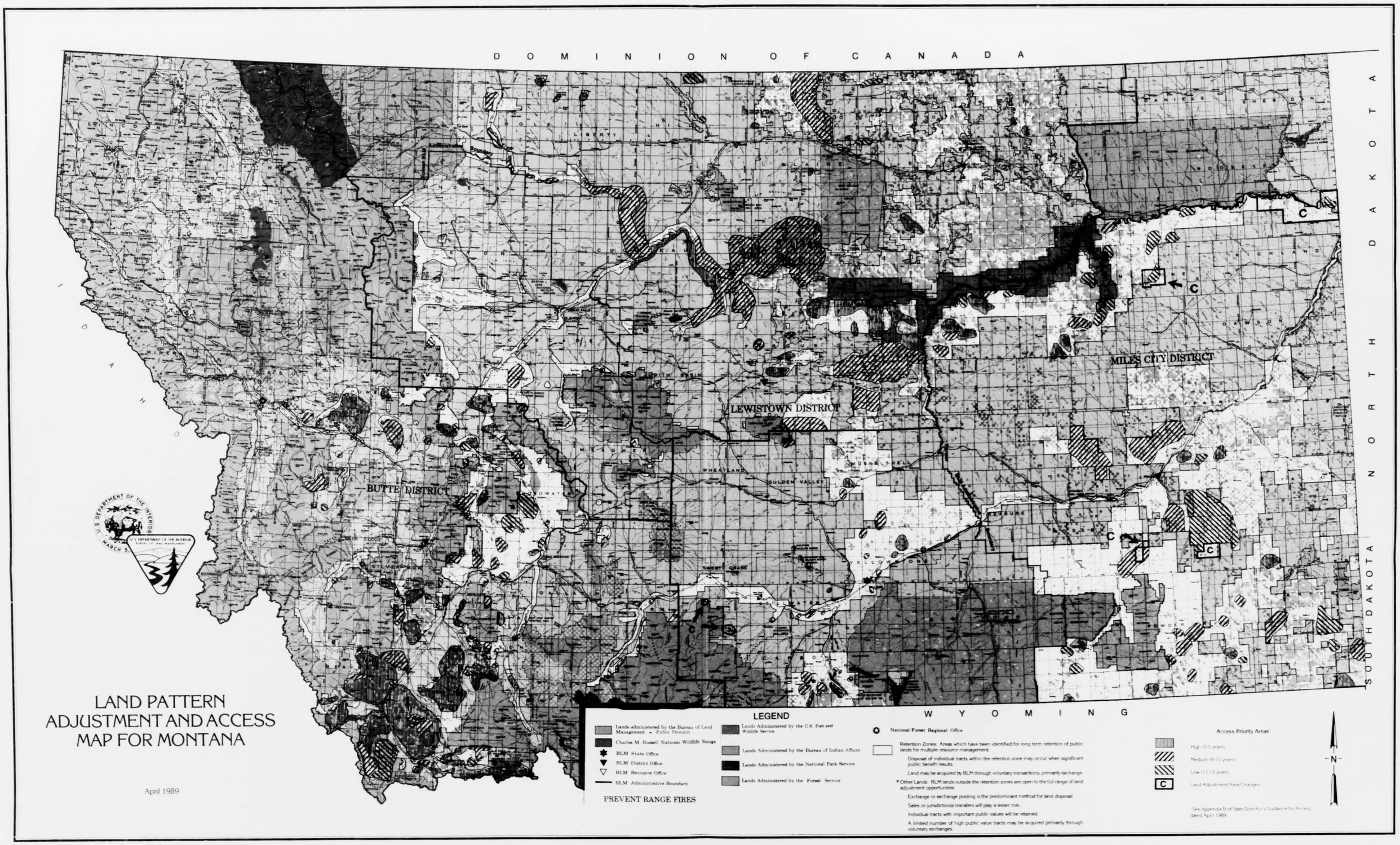
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U.S. DEPARTMENT OF THE INTERIOR
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MARCH 31
LAND PATTERN
ADJUSTMENT AND ACCESS
MAP FOR MONTANA
April 1989
LEGEND
Lands administered by the Bureau of Land Management – Public Domain
Charles M. Russell National Wildlife Range
BLM State Office
BLM District Office
BLM Resource Office
BLM Administrative Boundary
Lands Administered by the U.S. Fish and Wildlife Service
Lands Administered by the Bureau of Indian Affairs
Lands Administered by the National Park Service
Lands Administered by the Forest Service
National Forest Regional Office
Retention Zones: Areas which have been identified for long term retention of public lands for multiple resource management.
Disposal of individual tracts within the retention zone may occur when significant public benefit results.
Land may be acquired by BLM through voluntary transactions, primarily exchange.
* Other Lands: BLM lands outside the retention zones are open to the full range of land adjustment opportunities.
Exchange or exchange pooling is the predominant method for land disposal.
Sales or jurisdictional transfers will play a lesser role.
Individual tracts with important public values will be retained.
A limited number of high public value tracts may be acquired primarily through voluntary exchanges.
Access Priority Areas[1]
High (0-5 years)
Medium (6-10 years)
Low (11-15 years)
Land Adjustment Area Changes
[1] See Appendix B of State Director's Guidance for Access, dated April 1989.
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PREVENT RANGE FIRES

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LAND PATTERN ADJUSTMENT AND ACCESS MAP FOR NORTH DAKOTA

April 1989

Scale 1:1 000 000

1 inch equals approximately 16 miles

High (0-5

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M I N N E S O T A

Devils Lake · Grand Forks · Jamestown · Fargo · Wahpeton

Access Priority Areas[1]

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6-10 years)

ndix B of State Director's Guidance for Access.
1989.

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UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

STATE OF SOUTH DAKOTA

Scale 1:1,000,000

1 inch equals approximately 16 miles

SIOUX FALLS
RAPID CITY
Pierre
Mobridge
Aberdeen

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